

## Federal Deposit Insurance Corporation

## § 390.97

An application for reinstatement on any other grounds by any person suspended under § 390.93(b) may be filed at any time. Such application shall state with particularity the relief desired and the grounds therefor and shall include supporting evidence, when available. The applicant shall be accorded an opportunity for an informal hearing in the matter, unless the applicant has waived a hearing in the application and, instead, has elected to have the matter determined on the basis of written submissions. Such hearing shall utilize the procedures established in §§ 390.12 and 390.16(a). However, such suspension shall continue unless and until the applicant has been reinstated by order of the FDIC for good cause shown.

### **§ 390.95 Duty to file information concerning adverse judicial or administrative action.**

Any person appearing or practicing before the FDIC who has been or is the subject of a conviction, suspension, debarment, license revocation, injunction or other finding of the kind described in § 390.93(b) or (c) in an action not instituted by the OTS or FDIC shall promptly file a copy of the relevant order, judgment or decree with the Executive Secretary together with any related opinion or statement of the agency or tribunal involved. Any person who fails to so file a copy of the order, judgment or decree within 30 days after the entry of the order, judgment or decree, or the date such person initiates practice before the FDIC, for that reason alone may be disqualified from practicing before the FDIC until such time as the appropriate filing shall be made, but neither the filing of these documents nor the failure of a person to file them shall in any way impair the operation of any other provision of this subpart.

### **§ 390.96 Proceeding under this subpart.**

(a) All hearings required or permitted to be held under § 390.93(a) and (c) of this subpart shall be held before a presiding officer utilizing the procedures established in the rules of practice and procedure in adjudicatory proceedings under subpart C of this part.

(b) All hearings held under this subpart shall be closed to the public unless the FDIC on its own motion or upon the request of a party otherwise directs.

(c) Any proceeding brought under any section of this subpart shall not preclude a proceeding under any other section of this subpart or any other part of the FDIC's regulations.

### **§ 390.97 Removal, suspension, or debarment of independent public accountants and accounting firms performing audit services.**

(a) *Scope.* This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA), (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDIA for insured State savings associations.

(b) *Definitions.* As used in this section, the following terms have the meaning given below unless the context requires otherwise:

*Accounting firm.* The term *accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

*Audit services.* The term *audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and part 363, including attestation services. Audit services include any service performed with respect to a savings and loan holding company of a State savings association that is used to satisfy requirements imposed by section 36 of the FDIA or part 363 on that State savings association.

*Independent public accountant.* The term *independent public accountant* means any individual who performs or participates in providing audit services.

(c) *Removal, suspension, or debarment of independent public accountants.* The FDIC may remove, suspend, or debar an independent public accountant from performing audit services for State savings associations that are subject to section 36 of the FDIA if, after service

of a notice of intention and opportunity for hearing in the matter, the FDIC finds that the independent public accountant:

(1) Lacks the requisite qualifications to perform audit services;

(2) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to independent public accountants through the Sarbanes-Oxley Act of 2002, Public Law 107–204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(3) Has engaged in negligent conduct in the form of:

(i) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an independent public accountant knows, or should know, that heightened scrutiny is warranted; or

(ii) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(4) Has knowingly or recklessly given false or misleading information or knowingly or recklessly participated in any way in the giving of false or misleading information to the FDIC or any officer or employee of the FDIC;

(5) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law;

(6) Has been removed, suspended, or debarred from practice before any federal or state agency regulating the banking, insurance, or securities industries, other than by action listed in paragraph (j) of this section, on grounds relevant to the provision of audit services; or

(7) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(d) *Removal, suspension or debarment of an accounting firm.* If the FDIC deter-

mines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (c) of this section, the FDIC also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar an accounting firm or office thereof, and the term of any sanction against an accounting firm under this section, the FDIC may consider, for example:

(1) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(2) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(3) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(4) The extent to which managing partners or senior officers of the accounting firm have participated, directly or indirectly through oversight or review, in the act or failure to act; and

(5) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(e) *Remedies.* The remedies provided in this section are in addition to any other remedies the FDIC may have under any other applicable provisions of law, rule, or regulation.

(f) *Proceedings to remove, suspend, or debar.* (1) The FDIC may initiate a proceeding to remove, suspend, or debar an independent public accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) An independent public accountant or accounting firm named as a respondent in the notice issued under paragraph (f)(1) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the

same manner as other hearings under the Uniform Rules of Practice and Procedure contained in subpart C.

(g) *Immediate suspension from performing audit services.* (1) If the FDIC serves written notice of intention to remove, suspend, or debar an independent public accountant or accounting firm from performing audit services, the FDIC may, with due regard for the public interest and without preliminary hearing, immediately suspend an independent public accountant or accounting firm from performing audit services for savings associations, if the FDIC:

(i) Has a reasonable basis to believe that the independent public accountant or accounting firm engaged in conduct (specified in the notice served upon the independent public accountant or accounting firm under paragraph (f) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (c) or (d) of this section;

(ii) Determines that immediate suspension is necessary to avoid immediate harm to an insured depository institution or its depositors or to the depository system as a whole; and

(iii) Serves such independent public accountant or accounting firm with written notice of the immediate suspension.

(2) An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the FDIC dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the FDIC to the independent public accountant or accounting firm.

(h) *Petition to stay.* (1) Any independent public accountant or accounting firm immediately suspended from performing audit services in accordance with paragraph (g) of this section may, within 10 calendar days after service of the notice of immediate suspension, file a petition with the FDIC for a stay of such suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(2) Upon receipt of a stay petition, the FDIC will designate a presiding of-

ficer who shall fix a place and time (not more than 10 calendar days after receipt of such petition, unless extended at the request of the petitioner), at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. Any FDIC employee engaged in investigative or prosecuting functions for the FDIC in a case may not, in that or a factually related case, serve as a presiding officer or participate or advise in the decision of the presiding officer or of the FDIC, except as witness or counsel in the proceeding. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph, there will be no discovery and the provisions of §§390.35 through 390.41, 390.45, and 390.50 of the Uniform Rules will apply.

(3) Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(4) The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the presiding officer must promptly certify the entire record to the Board of Directors. Within 60 calendar days of the presiding officer's certification, the Board of Directors shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Board of Director's decision.

(i) *Scope of any order of removal, suspension, or debarment.* (1) Except as provided in paragraph (i)(2) of this section, any independent public accountant or accounting firm that has been removed, suspended (including an immediate suspension), or debarred from performing audit services by the FDIC may not, while such order is in effect, perform audit services for any State savings association.

(2) An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the FDIC, be made applicable to a limited number of State savings associations. (limited scope order).

(j) *Automatic removal, suspension, and debarment.* (1) An independent public accountant or accounting firm may not perform audit services for a State savings association if the independent public accountant or accounting firm:

(i) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the FDIC under section 36 of the FDIA;

(ii) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board or the Securities and Exchange Commission under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B)); or

(iii) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission.

(2) Upon written request, the FDIC, for good cause shown, may grant written permission to an independent public accountant or accounting firm to perform audit services for State savings associations. The request must contain a concise statement of action requested. The FDIC may require the applicant to submit additional information.

(k) *Notice of removal, suspension, or debarment.* (1) Upon issuance of a final order for removal, suspension, or debarment of an independent public ac-

countant or accounting firm from providing audit services, the FDIC shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(2) An independent public accountant or accounting firm that provides audit services to a State savings association must provide the FDIC with written notice of:

(i) Any currently effective order or other action described in paragraphs (c)(6) through (c)(7) or paragraphs (j)(1)(ii) through (iii) of this section; and

(ii) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(C) or (G)).

(3) Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action or 15 calendar days before an independent public accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

(l) *Application for reinstatement.* (1) Unless otherwise ordered by the FDIC, an independent public accountant, accounting firm, or office of a firm that was removed, suspended or debarred under this section may apply for reinstatement in writing at any time. The request shall contain a concise statement of action requested. The FDIC may require the applicant to submit additional information.

(2) An applicant for reinstatement under paragraph (1)(1) of this section may, in the FDIC's sole discretion, be afforded a hearing. The independent public accountant or accounting firm shall bear the burden of going forward with an application and the burden of proving the grounds supporting the application. The FDIC may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the FDIC, for good cause shown, has reinstated the applicant or until, in the case of a suspension, the suspension period has expired. The filing of a petition for reinstatement shall not stay

## Federal Deposit Insurance Corporation

## § 390.101

the effectiveness of the removal, suspension, or debarment of an independent public accountant or accounting firm.

### Subpart F—Application Processing Procedures

#### § 390.100 What does this subpart do?

(a) This subpart explains the FDIC's procedures for processing applications, notices, or filings (applications) under parts 390 and 391 for State savings associations. Except as provided in paragraph (b) of this section, §§ 390.103 through 390.110 and §§ 390.126 through 390.135 apply whenever an FDIC regulation requires any person (you) to file an application with the FDIC. Sections 390.111 through 390.125, however, only apply when a FDIC regulation incorporates the procedures in those sections or where otherwise required by the FDIC.

(b) This subpart does not apply to any of the following:

(1) An application related to a transaction under section 13(c) or (k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(c) or (k).

(2) A request for reconsideration, modification, or appeal of a final FDIC action.

(3) A request related to litigation, an enforcement proceeding, a supervisory directive or supervisory agreement. Such requests include a request seek-

ing approval under, modification of, or termination of an order issued under subparts C or D, a supervisory agreement, a supervisory directive, a consent merger agreement or a document negotiated in settlement of an enforcement matter or other litigation, unless an applicable FDIC regulation specifically requires an application under this subpart.

(4) An application filed under a FDIC regulation that prescribes other application processing procedures and time frames for the approval of applications.

(c) If a FDIC regulation for a specific type of application prescribes some application processing procedures, or time frames, the FDIC will apply this subpart to the extent necessary to process the application. For example, if a FDIC regulation for a specific type of application does not identify time periods for the processing of an application, the time periods in this subpart apply.

#### § 390.101 Do the same procedures apply to all applications under this subpart?

The FDIC processes applications for State savings associations under this subpart using two procedures, expedited treatment and standard treatment. To determine which treatment applies, you may use the following chart:

If . . .	Then the FDIC will process your application under . . .
(a) The applicable regulation does not specifically state that expedited treatment is available . . . . .	Standard treatment.
(b) You are not a State savings association . . . . .	Standard treatment.
(c) Your composite rating is 3, 4, or 5. The composite rating is the composite numeric rating that the FDIC or the other federal banking regulator assigned to you under the Uniform Financial Institutions Rating System or under a comparable rating system. The composite rating refers to the rating assigned and provided to you, in writing, as a result of the most recent examination.	Standard treatment.
(d) Your Community Reinvestment Act (CRA) rating is Needs to Improve or Substantial Non-compliance. The CRA rating is the Community Reinvestment Act performance rating that the FDIC or the other federal banking regulator assigned and provided to you, in writing, as a result of the most recent compliance examination. See, for example, 12 CFR 195.28.	Standard treatment.
(e) Your compliance rating is 3, 4, or 5. The compliance rating is the numeric rating that the FDIC or the other federal banking regulator assigned to you under the FDIC compliance rating system, or a comparable rating system used by the other federal banking regulator. The compliance rating refers to the rating assigned and provided to you, in writing, as a result of the most recent compliance examination.	Standard treatment.
(f) You fail any one of your capital requirements under subpart Z . . . . .	Standard treatment.
(g) The FDIC has notified you that you are an association in troubled condition . . . . .	Standard treatment.
(h) Neither the FDIC nor any other federal banking regulator has assigned you a composite rating, a CRA rating or a compliance rating.	Standard treatment.
(i) You do not meet any of the criteria listed in paragraphs (a) through (h) of this section . . . . .	Expedited treatment.